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Attorneys for Defendants, **COUNTY OF LOS ANGELES, et al.**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALLEN BERNARD SHAY,

Plaintiff,

vs.

COUNTY OF LOS ANGELES, LOS
ANGELES COUNTY SHERIFF'S
DEPARTMENT, DEPUTY
CHRISTOPHER DERRY, and DOES 1
through 10,

Defendants

Case No.: CV15-4607 CAS (RAOx)

**DEFENDANTS' EX PARTE
APPLICATION FOR AN ORDER
AMENDING THE SCHEDULING
ORDER TO CONTINUE THE PRE-
TRIAL CONFERENCE AND
TRIAL DATES; DECLARATION
OF ANTONIO K. KIZZIE**

[Filed Concurrently with Proposed
Order]

[Hon. Christina A. Snyder
Courtroom 5]

Complaint Filed: June 23, 2015

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that Defendant COUNTY OF LOS ANGELES,
and DEPUTY CHRISTOPHER DERRY (collectively "Defendants"), hereby apply
on an *ex parte* basis for an order continuing the pretrial conference from July 10,

1 2017 to January 15, 2018 and trial from July 25, 2017 to January 22, 2018 or a
2 later date as convenient for the Court. All discovery and expert discovery has been
3 completed, and no party will be prejudiced or advantaged by this continuance.

4 **GOOD CAUSE** exists for a continuance of the aforementioned dates
5 because Ms. Davida Friedman, the Defendants' former lead counsel in this matter,
6 left IVIE, McNEILL & WYATT, the firm representing Defendants, on April 28,
7 2017. As a result, defendants' new counsel will be Mr. Antonio K. Kizzie, Esq.
8 ("Mr. Kizzie"). Currently, the pretrial conference is scheduled for July 10, 2017
9 and trial scheduled for July 25, 2017. However, Mr. Kizzie is scheduled and has
10 already purchased nonrefundable tickets to be out of the state and country from
11 June 28, 2017 to July 16, 2017. Mr. Kizzie is also scheduled to attend the National
12 Bar Association's Annual Conference in Toronto, Ontario from Friday, July 28,
13 2017 to Sunday, August 6, 2017. Finally, from August 9, 2017 to August 13, 2017,
14 Mr. Kizzie will be celebrating his wedding anniversary.
15

16 **GOOD CAUSE** exists for a continuance of the aforementioned dates
17 because Mr. Kizzie has not been involved in the litigation or discovery of this
18 matter in anyway except for the most recent deposition April 27, 2017. Mr. Kizzie
19 is currently in the process of reviewing the files, discovery materials, and other
20 pertinent documents consisting of over a dozen large binders filled with over one-
21 hundred and eighty (180) various classes of real estate and criminal trial
22 documents for trial preparation and strategy purposes, but will require additional
23 time of at least 120 days to do so due to the extensive and complicated nature of
24 this matter involving real estate fraud in addition to his current caseload.
25

26 **GOOD CAUSE** exists for a continuance of the aforementioned dates to the
27 requested timeframe because Mr. Kizzie and Defendants' senior co-lead counsel,
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1 Rickey Ivie (“Mr. Ivie”), are in trial on August 2, 2017 in the matter of *Jermaine*
2 *Toomer v. County of Los Angeles*, et.al. Case No.: BC570633 (one of Ms.
3 Frieman’s cases that must also be continued due to the aforementioned conflicts),
4 Mr. Kizzie is lead counsel in the trial of *M.R. v. Victor Valley Unified High School*
5 *District* Case No. CIVDS1418572 on September 4, 2017, Mr. Ivie is out of the
6 office from September 25, 2017 until October 13, 2017, then scheduled to begin
7 trial on October 17, 2017 in the matter of *Cathy Bonner v. COLA*, et.al. Case No.
8 CV15-08885-GW(SSx), November 6, 2017 in the matter of *Oswaldo Ureta v.*
9 *COLA*, et.al. Case No. BC501051 (already continued four (4) times and likely to
10 take 4-6 weeks), November 13, 2017 in the matter of *Macario Garcia v. County of*
11 *Los Angeles*, et.al. Case No. CIV-14-07634 AB(PLAx), and November 28, 2017 in
12 the matter of *Nakesha Robertson v. COLA*, et.al. Case No.: 16-CV-02761 BRO
13 (SKx). Afterwards, Defendants’ co-lead counsel, Antonio K. Kizzie, is out of
14 California and unavailable until January 2018 due to the religious holidays.

16 **MEET AND CONFER** – Defendants met and conferred with Plaintiff’s
17 counsel on April 25 and May 4, 2017 regarding their intent to file the instant ex
18 parte application. (Declaration of Antonio K. Kizzie ¶ 4) Plaintiff will oppose this
19 application. There has only been one previous ex parte application to continue this
20 trial due to Ms. Frieman’s grandfather being diagnosed with stage 4 colon cancer
21 and entering into home hospice due to the terminal prognosis.

22 **NOTICE** - On May 10, 2017, Mr. Kizzie informed Plaintiff’s counsel Mr.
23 John Burton via telephone of this instant motion. The address, contact
24 information, and email address of Plaintiff’s counsel is set forth below:

25 The Law Offices of John Burton
26 128 North Fair Oaks Avenue
27 Pasadena, California 91103
28

1 Tel: (626) 449-8300; Fax (626) 449-8197
2 jb@johnburtonlaw.com

3 This ex parte application is based on the instant application, the attached
4 Memorandum of Points and Authorities, the attached Declaration of Antonio K.
5 Kizzie and upon such further evidence, authority and argument as allowed by this
6 Court.

7 DATED: May 10, 2017

IVIE, McNEILL & WYATT

8 By: /s/ Antonio K. Kizzie

9 **ANTONIO K. KIZZIE, ESQ.**

10 Attorneys for Defendants

11 **COUNTY OF LOS ANGELES, et al.**
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff ALLEN BERNARD SHAY alleges that DEPUTY CHRISTOPHER DERRY violated Plaintiff's civil rights by allegedly filing false sworn statements accusing Plaintiff of theft and stating that Plaintiff had access to money feloniously obtained that could be used for bail. Plaintiff also alleges that on May 20, 2014, Deputy Derry wrongfully arrested him because of Deputy Derry's alleged racial bias. Plaintiff alleges that Deputy Derry issued a defamatory, false and misleading press release.

Contrary to Plaintiff's characterization, the arrest was not wrongful because it was based on probable cause, and the press release was not defamatory because it was based on factual information related to the lawful arrest. Plaintiff also alleges that the COUNTY OF LOS ANGELES, and the LOS ANGELES COUNTY SHERIFF'S DEPARTMENT are liable under theories of *Monell* and supervisory liability, despite producing no evidence of their knowledge, involvement or any failure to adequately train or supervise deputies.

This Court's current scheduling order indicates the final pretrial conference date is scheduled for July 10, 2017 and trial date is July 25, 2017. The instant *ex parte* application requests the following relief:

(1) An Order continuing the final pretrial conference and applicable pretrial document dates from July 10, 2017 to January 15, 2018 or a later date as convenient for the Court; and

(2) An Order continuing the trial from July 25, 2017 to January 22, 2018 or a later date as convenient for the Court.

1 This application and request is not made for the purpose of undue delay or
2 prejudice, and is made upon the grounds that good cause exists to continue the trial
3 due to Defendants' obtaining new counsel in this matter and the reasons stated
4 herein.

5 **II. LEGAL AUTHORITY FOR AN EX PARTE APPLICATION**

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7 *Ex parte* applications are authorized pursuant to L.R. 7-19 et seq. which
8 provides in relevant part that the attorney applying for *ex parte* relief shall have a
9 duty to (a) to make reasonable, good faith efforts orally to advise counsel for all
10 other parties, if known, of the date and substance of the proposed *ex parte*
11 application and (b) to advise the Court in writing and under oath of efforts to
12 contact other counsel and whether any other counsel, after such advice, opposes
13 the application.
14

15 **III. MEET AND CONFER**

16 Defendants met and conferred with Plaintiff's counsel on April 25, 2017 and
17 May 4, 2017 regarding their intent to file the instant *ex parte* application. [Kizzie
18 Decl. ¶ 4] Plaintiff will oppose this application. [Kizzie Decl. ¶ 4]

19 **IV. GOOD CAUSE EXISTS TO GRANT THE REQUESTED RELIEF**

20
21 **GOOD CAUSE** exists for a continuance of the aforementioned dates
22 because Ms. Davida Friedman, the Defendants' former lead counsel in this matter,
23 left IVIE, McNEILL & WYATT, the firm representing Defendants, on April 28,
24 2017. [Kizzie Decl. ¶ 5] As a result, defendants' new counsel will be Mr. Antonio
25 K. Kizzie, Esq. ("Mr. Kizzie"). [Kizzie Decl. ¶ 5] Currently, the pretrial
26 conference is scheduled for July 10, 2017 and trial scheduled for July 25, 2017.
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1 However, Mr. Kizzie is scheduled and has already purchased nonrefundable
2 tickets to be out of the state and country from June 28, 2017 to July 16, 2017.

3 [Kizzie Decl. ¶ 6] Mr. Kizzie is also scheduled to attend the National Bar
4 Association's Annual Conference in Toronto, Ontario from Friday, July 28, 2017
5 to Sunday, August 6, 2017. [Kizzie Decl. ¶ 6] Finally, from August 9, 2017 to
6 August 13, 2017, Mr. Kizzie will be celebrating his wedding anniversary and
7 unavailable. [Kizzie Decl. ¶ 6]

8 **GOOD CAUSE** exists for a continuance of the aforementioned dates
9 because Mr. Kizzie has not been involved in the litigation or discovery of this
10 matter in anyway except for the most recent deposition April 27, 2017. [Kizzie
11 Decl. ¶ 7] In addition to his current caseload, Mr. Kizzie is currently in the process
12 of reviewing the files, discovery materials, and other pertinent documents
13 consisting of over a dozen (12) large binders filled with over one-hundred and
14 eighty (180) various classes of real estate and criminal trial documents for trial
15 preparation and strategy purposes. However, Mr. Kizzie will require additional
16 time of at least 120 days to do so due to the extensive and complicated nature of
17 this matter involving real estate fraud dating back to 2005 and 2007 that can only
18 be obtained through this order. [Kizzie Decl. ¶ 7]

19 **GOOD CAUSE** exists for a continuance of the aforementioned dates to the
20 requested timeframe because Mr. Kizzie and Defendants' senior co-lead counsel,
21 Rickey Ivie ("Mr. Ivie"), are in trial on August 2, 2017 in the matter of *Jermaine*
22 *Toomer v. County of Los Angeles*, et.al. Case No.: BC570633 (one of Ms.
23 Frieman's cases that must also be continued due to the aforementioned conflicts),
24 Mr. Kizzie is lead counsel in the trial of *M.R. v. Victor Valley Unified High School*
25 *District* Case No. CIVDS1418572 on September 4, 2017, Mr. Ivie is out of the
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1 office from September 25, 2017 until October 13, 2017, then scheduled to begin
2 trial on October 17, 2017 in the matter of *Cathy Bonner v. COLA, et.al.* Case No.
3 CV15-08885-GW(SSx), November 6, 2017 in the matter of *Oswaldo Ureta v.*
4 *COLA, et.al.* Case No. BC501051 (already continued four (4) times and likely to
5 take 4-6 weeks), November 13, 2017 in the matter of *Macario Garcia v. County of*
6 *Los Angeles, et.al.* Case No. CIV-14-07634 AB(PLAx), and November 28, 2017 in
7 the matter of *Nakesha Robertson v. COLA, et.al.* Case No.: 16-CV-02761 BRO
8 (SKx). [Kizzie Decl. ¶ 8] Afterwards, Defendants' co-lead counsel, Mr. Kizzie, is
9 out of state and unavailable until January 2018 due to the religious holidays.
10 [Kizzie Decl. ¶ 8]
11

12 To Defendants' counsel's knowledge both parties have been diligent and all
13 discovery and expert discovery has been completed, and no party will be
14 prejudiced or unfairly advantaged by this continuance. [Kizzie Decl. ¶ 9]
15 Defendants new counsel, however, will be unduly and severely prejudiced without
16 this brief and final continuance due the extensive nature and complexity of this
17 matter. [Kizzie Decl. ¶ 9]
18

19 Neither Plaintiff or witnesses will be unduly inconvenienced or prejudiced
20 by this brief continuance. [Kizzie Decl. ¶ 10] There has only been one previous ex
21 parte application to continue this trial due to Ms. Frieman's grandfather being
22 diagnosed with stage 4 colon cancer and entering into home hospice due to the
23 terminal prognosis. [Kizzie Decl. ¶ 10] Defendants apologize for any
24 inconvenience granting this relief may cause the Court, however, due to the
25 circumstances, an order continuing the trial and other related dates is necessary and
26 hereby respectfully requested.
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1 **V. NOTICE**

2 On May 10, 2017, Mr. Kizzie informed Plaintiff's counsel Mr. John Burton
3 in person, via electronic mail and telephone of this instant motion. The address,
4 contact information, and email address of Plaintiff's counsel is set forth below:

5 The Law Offices of John Burton
6 128 North Fair Oaks Avenue
7 Pasadena, California 91103
8 Tel: (626) 449-8300; Fax (626) 449-8197
9 jb@johnburtonlaw.com

10 **VI. CONCLUSION**

11 For the foregoing reasons, Defendants request that this Court grants their *ex*
12 *parte* application and continue the aforementioned dates as requested herein or
13 later dates as convenient for the Court.

14 DATED: May 10, 2017

IVIE, McNEILL & WYATT

15 By: /s/ Antonio K. Kizzie

16 **ANTONIO K. KIZZIE, ESQ.**

17 Attorneys for Defendants

18 **COUNTY OF LOS ANGELES, et al.**

DECLARATION OF ANTONIO K. KIZZIE

I, ANTONIO K. KIZZIE, declare as follows:

1. I am an attorney duly licensed to practice in California and in this District Court. Additionally, I am an associate of Ivie, McNeill & Wyatt counsel of record for Defendants in this action.

2. I make this declaration in support of Defendants' *Ex Parte* Application for an Order continuing the final pretrial conference and trial dates.

3. The instant ex parte application requests the following relief:

(1) An Order continuing the final pretrial conference and applicable pretrial document dates from July 10, 2017 to January 15, 2018 or a later date as convenient for the Court; and

(2) An Order continuing the trial from July 25, 2017 to January 22, 2018 or a later date as convenient for the Court.

4. I met and conferred with Plaintiff's counsel on April 25, 2017 and May 4, 2017 regarding Defendants' intent to file the instant ex parte application. Plaintiff will oppose this application.

5. **GOOD CAUSE** exists for a continuance of the aforementioned dates because Ms. Davida Friedman, the Defendants' former lead counsel in this matter, left IVIE, McNEILL & WYATT, the firm representing Defendants, on April 28, 2017. As a result, I am defendants' new counsel. Currently, the pretrial conference is scheduled for July 10, 2017 and trial scheduled for July 25, 2017.

6. However, I am scheduled and have already purchased nonrefundable tickets to be out of the state and country from June 28, 2017 to July 16, 2017. I am also scheduled to attend the National Bar Association's Annual Conference in Toronto, Ontario from Friday, July 28, 2017 to Sunday, August 6, 2017. Finally, from August 9, 2017 to August 13, 2017, I will be celebrating my wedding

anniversary and unavailable.

7. **GOOD CAUSE** exists for a continuance of the aforementioned dates because I have not been involved in the litigation or discovery of this matter in anyway except for the most recent and last deposition April 27, 2017. In addition to my current caseload, I am currently in the process of reviewing the files, discovery materials, and other pertinent documents consisting of over a dozen (12) large binders filled with over one-hundred and eighty (180) various classes of real estate and criminal trial documents for trial preparation and strategy purposes. However, I will require additional time of at least 120 days to do so due to the extensive and complicated nature of this matter involving real estate fraud dating back to 2005 and 2007 that can only be obtained through this order.

8. **GOOD CAUSE** exists for a continuance of the aforementioned dates to the requested timeframe because Defendants' senior co-lead counsel, Rickey Ivie ("Mr. Ivie"), and I are in trial on August 2, 2017 in the matter of *Jermaine Toomer v. County of Los Angeles*, et.al. Case No.: BC570633 (one of Ms. Frieman's cases that must also be continued due to the aforementioned conflicts), I am lead counsel in the trial of *M.R. v. Victor Valley Unified High School District* Case No. CIVDS1418572 on September 4, 2017, Mr. Ivie is out of the office from September 25, 2017 until October 13, 2017, then scheduled to begin trial on October 17, 2017 in the matter of *Cathy Bonner v. COLA*, et.al. Case No. CV15-08885-GW(SSx), I am lead counsel in the trial of *Osvaldo Ureta v. COLA*, et.al. Case No. BC501051 (already continued four (4) times and likely to take 4-6 weeks) on November 6, 2017, I am lead counsel in the matter of *Macario Garcia v. County of Los Angeles*, et.al. Case No. CIV-14-07634 AB(PLAx) on November 13, 2017, and November 28, 2017 in the matter of *Nakesha Robertson v. COLA*, et.al. Case No.: 16-CV-02761 BRO (SKx). Afterwards and in December 2017, I

1 am out of state and unavailable until January 2018 due to the religious holidays.

2 9. To my knowledge both parties have been diligent and all discovery
3 and expert discovery has been completed, and no party will be prejudiced or
4 unfairly advantaged by this continuance. Defendants and I, however, will be
5 unduly and severely prejudiced without this brief and final continuance due the
6 extensive nature and complexity of this matter.

7 10. Neither Plaintiff nor witnesses will be unduly inconvenienced or
8 prejudiced by this brief continuance. To my knowledge, there has only been one
9 previous ex parte application to continue this trial due to Ms. Frieman's
10 grandfather being diagnosed with stage 4 colon cancer and entering into home
11 hospice due to the terminal prognosis. Plaintiff will not be prejudiced by a brief
12 three month stay.

13 11. On May 10, 2017, Mr. Kizzie informed Plaintiff's counsel Mr. John
14 Burton in person, via electronic mail and telephone of this instant motion.

15 I declare under the penalty of perjury under the laws of the United States and
16 the State of California that the foregoing is true and correct. Executed this 10th day
17 of May 2017.

18 /s/ Antonio K. Kizzie
19 Antonio K. Kizzie